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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 90-305-C - ORDER NO. 90-1171

DECEMBER 12, 1990

IN RE: Proceeding to Consider Allowing ) ORDER RULING ON  
Local and IntraLATA 0+ Collect ) MOTIONS TO STRIKE  
Authority for COCOT Providers ) CERTAIN TESTIMONY  
Serving Confinement Facilities. ) AND EXHIBITS

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of separate Motions filed on behalf of Southern Bell Telephone & Telegraph Company (Southern Bell) seeking to strike certain testimony of witnesses Presson, Townsend, and Mann. Additionally, Southern Bell filed a Motion to Strike the Proposed Tariffs, Balance Sheets, and Profit and Loss Statements. The testimony and exhibits were filed in this Docket on behalf of Pay-Tel Communications, Inc. (Pay-Tel), Coin Telephone, Inc. (CoinTel), and Intellicall, Inc. (Intellicall) (collectively hereinafter referred to as the "Applicants"). The Applicants filed returns to the Motions of Southern Bell.

As to the prefiled testimony sought to be stricken, Southern Bell sought to strike several portions of the prefiled testimony of Mr. James Mann, Detention Manager for York County Detention Center. Southern Bell contends that Mr. Mann is not authorized by any governing body of York County to testify as an official

representative of the County, therefore, he is not qualified to testify as to any matters affecting or pertaining to the York County Detention Center. Based on that fact, Southern Bell contends that Mr. Mann's testimony should be stricken in its entirety. Alternatively, Southern Bell proposes that several statements made by witness Mann should be stricken because they are not supported by any factual study or empirical data. Southern Bell rests its objection to Mr. Mann's testimony on Hamm v. Southern Bell Telephone & Telegraph Company, \_\_\_ S.C. \_\_\_, 394 S.E.2d 311, 313 (1990).

The Commission has considered the Motion of Southern Bell to Strike Mr. Mann's testimony in its entirety, or in the alternative, to strike certain portions listed in its Motion. The Commission has also considered the reply filed by the Applicants.

The Commission has reviewed the testimony of witness Mann and finds that Mr. Mann's prefiled testimony is submitted simply to reflect his personal and professional experience as Detention Manager for the York County Detention Facility. Mr. Mann is competent to testify as to its own personal experience based upon his professional position and his testimony will be accepted in its entirety as such.

As to Southern Bell's alternative position of striking certain portions of witness Mann's testimony as not being supported by any factual study or empirical data, the Commission finds that Southern Bell's reliance on Hamm v. Southern Bell, supra, is misplaced. The facts of Hamm v. Southern Bell concerned expert

opinion testimony that Southern Bell would suffer future losses based on "a very extensive, conservative study...performed to quantify the financial impact on Southern Bell's South Carolina intrastate operations resulting from changes to current Commission policy for WATS service." This "study" referred to by the Southern Bell witness was never introduced into evidence and the Court determined that there must be an evidentiary showing of the facts upon which the opinion is predicated. In Hamm v. Southern Bell, the study referred to was never put into evidence, therefore, the expert's opinion was not based on fact. In this instance, Mr. Mann's testimony is based on his experience as a jail administrator. He has direct personal knowledge and experience of the matters to which he is testifying. Southern Bell's objection to Mr. Mann's testimony is overruled and the Motion to Strike is denied.

Southern Bell also filed a Motion to Strike certain portions of the prefiled testimony of B. Reid Presson of Intellicall and J. Vincent Townsend of PayTel. Southern Bell asserts that their testimony was not supported by any data or studies but is based solely upon the unsupported opinion of these witnesses. Again, Southern Bell cites Hamm v. Southern Bell, supra, as its authority for its Motion.

Unlike Hamm v. Southern Bell, the Applicants have shown the basis upon which the statements of witnesses Townsend and Presson are predicated, both in the testimony itself and in the relevant interrogatory responses. The support for testimony need not

consist of studies of written documentation, but may be made by any and all means permitted, including direct personal knowledge or experience. The Commission is of the opinion that the separate Motions to Strike the testimonies of witnesses Mann, Presson and Townsend should be denied.

Southern Bell also filed a Motion to Strike the proposed tariffs, balance sheets, and profit and loss statements prefiled on behalf of the Applicants. Southern Bell asserts that the Applicants have over looked the "requirement" that any proposed schedule of rates shall be published at least thirty (30) days prior to hearing and that the filing of this information by the Applicants clearly falls beyond the prefiling deadlines of this docket. Southern Bell also claims that it does not have sufficient time to review the filings and prepare for the hearing at this late date.

The Commission has searched its rules and regulations, as well as its statutes concerning telephone utilities and can find no requirement that any proposed schedule of rates shall be published at least thirty (30) days prior to the hearing. The Commission does have a requirement that as part of an Application, proposed rates and charges or "tariffs" should be filed with the Application. This is required by R.103-834(A)(3). There is no requirement for the publishing of such proposed schedule of rates, nor is there a requirement that such be published at least thirty days prior to the hearing. While the Commission recognizes that the filing of this information by the Applicants falls beyond the

prefiling of testimony deadlines, the Commission, in Order No. 90-1154, issued December 5, 1990, determined that the filing of this information at this time by the Applicants satisfied the Commission's requirement to have this information as part of the Applicants' Application for authority. The Commission is further of the opinion that the filing of this information will not prejudice any party to this proceeding or hamper its presentation at the hearing in this docket. Any party needing this information could have requested this through the discovery process. Based on the foregoing, the Commission has determined that the Motion of Southern Bell to strike the proposed tariffs, balance sheets, and profit and loss statements filed by the Applicants in this matter should be, and hereby is, denied.

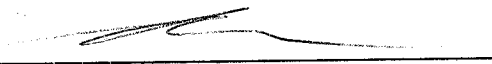
IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

Deputy

  
Executive Director

(SEAL)